IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 285 OF 1998

1. Smt.Kousabai d/o Sopan Savant,
2. Popat Sopan Sawant..... ....Appellants.
(Orig.Accd.)

V/s

The State of Maharashtra .... Respondents.

Mrs.Anita A. Agarwal, Adv. for the appellants.

Mr.A. M.Shringarpure, APP for the State.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

13th July, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Pune in Sessions Case No.410 of 1994 on 30.12.1997 the appellants-accused have preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellants as also the

learned Public Prosecutor we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution story stated briefly is that after one year of the marriage the deceased Vijaya had no issue and was ill treated by her husband the appellant No.2 and his sister the appellant No.1. Whenever the deceased visited her parents house she used to complaint to them of the said ill treatment. The deceased after 5-6 years delivered a female child and this also was an additional ground to harass her because the appellants wanted a male child. According to the prosecution on 26.7.1994 the appellant No.1 by pouring kerosene on the person of Vijaya set her on fire by which she received burn injuries. Vijaya was taken to the Sassoon Hospital where dying declaration was recorded by the Special Judicial Magistrate wherein the name of the appellant No.1 was disclosed.

4. It is this judgment and order of conviction which is challenged by the appellants-original accused.

5. It was contended by Mrs.Agarwal, learned counsel appearing on behalf of the appellants that the impugned order is liable to be set aside for the reasons (i) the entire evidence pertaining to section 498A of Indian Penal Code pertains to instances much prior to the incident and therefore no case is made out for conviction under section 498A. In any event, the submission is that such

skirmishes in married life are part of wear and tare of the marriage and cannot therefor form basis for conviction under section 498 of the Indian Penal Code; (ii) the evidence of P.Ws. 1 and 2 are liable to be rejected as partisan noted with prejudice and therefore unacceptable being without corroboration. (iii)the death though caused by burning, that evidence regarding burning is not corroborated by medical evidence by examining the doctor and therefore in the absence of any eye witness merely because the death has occurred due to burns it cannot be said that the conviction is proper. The learned additional public prosecutor countered these submissions and pointed out from the evidence that the ill treatment meted out was acute harassment and cruelty. The dying declaration as made by the victim is duly proved as Ex.24. P.W.6-J.H. Khomane, Special Executive Magistrate who recorded the dying declaration has deposed in detail regarding manner in which dying declaration was recorded and therefore there is no reason to interfere with the order. These submissions we have to consider in the light of the reappreciation of evidence.

6. Even if the entire evidence on record is accepted ignoring the dying declaration one thing will be obvious that there is not even a whisper about cruelty by the husband or any participation whatever of the husband in the incident of burning. Merely because he is the husband of victim conviction under section 498 of IPC cannot automatically be recorded. Evidence of P.W.2-S.K.Temgire mother of the victim does not make out any case implicating the

accused No.2-husband. In our opinion, the conviction of accused No.2 under section 498A of IPC in the circumstances is unsustainable in law. The appeal on this ground in so far accused No.2 is concerned requires to be allowed.

7. That takes us to the appeal by the sister-in-law of the victim who has been specifically named in the dying declaration by the victim duly recorded by P.W.6. The dying declaration Ex.24 has requisite certificate of doctor certifying that at the beginning and till the end as also throughout the declaration the victim was conscious and oriented and capable of giving a declaration. In the face of such certificate duly obtained by the Special Executive Magistrate duly proved by him in the Court where he deposed as P.W.6, in our opinion, is adequate evidence duly supported by the documentary evidence in the shape of panchnamas for convicting as also maintaining the conviction of accused No.1. Some omissions were pointed out by the learned counsel in the statement of P.W.1 and the First Information Report registered at the instance of P.W.1. Those omissions, in our opinion, are not material and therefore do not require wholesale rejection of the evidence of P.W.1 and even if that is so rejected the evidence of P.W.2 and the dying declaration Ex.24 also is enough to sustain the conviction. P.Ws.1 and 2 have narrated with material details the manner in which the ill treatment was meted out and the torture was inflicted by accused No.1. How the burning took place is explained by the victim herself. In such circumstances, in our opinion, adequate corroboration to dying declaration is available on record. There is

therefore no error committed by the learned trial Judge in convicting the accused No.1 under section 302 of IPC. In our opinion, her appeal deserves to be dismissed. In the result therefore the appeal partly succeeds and is thus partly allowed. The judgment and order of conviction under section 498A in so far accused No.2-husband is concerned is set aside and the appeal of the accused No.1-Smt.Kausabai Sopan Sawant against the conviction under section 498A and section 302 of IPC is dismissed. The bail bond of accused No.2 shall stand canceled. Accused No.-Kausabai Sopan Sawant shall surrender to bail in one month' stime failing which immediate and urgent action shall be taken by the Sessions Court, Pune to effect the arrest of accused No.1 and see that she surrenders to jail and suffers the imprisonment sentenced.